

Californians for Renewable Energy, Inc.(CARE)

821 Lakeknoll Dr.
Sunnyvale, CA 94089
(408) 325-4690

STATE OF CALIFORNIA

Energy Resources Conservation
and Development Commission

In the Matter of:

) Docket No. 99-AFC-3

)

Application for Certification for the

) **Pre-hearing Conference Brief**

Metcalf Energy Center [Calpine

)

Corporation and Bechtel Enterprises, Inc.]

)

To whatever extent it seeks to impose any significant duties on us, as members of the public participating in a CEQA review process, to conduct investigations, retain experts, procure and marshal evidence, provide legal interpretations or opinions, or otherwise take affirmative action of any kind (with the exception of whatever cooperation or assistance we can reasonably provide—which we are perfectly willing to do—given our limited knowledge, resources, etc.), we strongly object to the so called “evidentiary hearing” process being imposed on us by your CEC procedures and regulations. As the state Supreme Court has made perfectly clear, under CEQA it is the lead agency’s and not the public that has the duty to conduct adequate environmental investigations (e.g., determining whether there are feasible, ecologically superior project alternatives). And in order to trigger an agency’s duty to conduct an adequate environmental investigation, all the public has to do is present reasonable, objective information indicating that the project may have a potentially significant environmental impact. That information need not rise to the level of “substantial evidence.” We believe we have already presented such information, in addition to having presented substantial evidence, in regard to a considerable number of environmental factors or issues, chief among which are biological resources, air quality, the availability of natural gas, alternative sources of fuel in case there is a shortage of natural gas, and the like. This information and this evidence is already in the CEC administrative record. It is not our duty to review the record and again marshal, summarize or otherwise deal with that information/evidence. It is the CEC’s duty to review all of the material we and other members of the public have submitted and follow-up on any investigation that may be needed. We demand that the CEC discharge its duty to do so, and we refuse to be put into a situation where we have to constantly repeat and resubmit comments, information and evidence to have it considered. Therefore, we hereby incorporate by this reference each and every comment, and item of information or evidence previously submitted as if it were set forth verbatim in this instrument. PLEASE TAKE NOTICE that your failure to comply with our requests/demands may be raised as issues to be litigated in any legal action that may follow the approval of the present project.

In addition to the foregoing, we request an “evidentiary hearing” or other procedural devices to fully investigate, consider, evaluate and provide good faith and fairly reasoned written responses to all of the following:

1. The substantial evidence or other information relied upon as support for all mitigation measures proposed for each and every potentially significant impact on each and every environmental resource or condition that is being or should be mitigated. It is up to you to identify these items of evidence, impacts, resources and measures, and we call upon you to do so in a comprehensive, fair, reasonable and good faith manner. Some examples of this include, but are not limited to,

- a) Biological Resources (particularly endangered, threatened and sensitive species, including those identified in the USFWS Biological Opinion, which is still pending,¹ applicant's Biological Resources Mitigation Implementation and Monitoring Plan (BRMIMP), etc.);
- b) Air Quality Impacts (Criteria Pollutants and Toxic Air Contaminants [TACs], with specific emphasis on impacts on biological resources and public health);
- c) Visual Resources;
- d) Impacts on Environmental Justice Populations (including low-income, minority, children, the elderly and the handicapped), as well as cultural resources;²
- e) Water Resources (use of potable and reclaimed water resource, impacts on groundwater resources, stream and creek discharge, and associated impacts on biological resources, and public health);
- f) Hazardous materials and risk of upset; and (without limitation)
- g) Land Use and Cumulative Impacts (like CVRP's).

2. The substantial evidence or other information relied upon as support for the effectiveness of all mitigation measures mention in item 1, above.

3. The substantial evidence or other information establishing that (a) the proposed mitigation measures were effectively incorporated into the project in the manner required by CEQA, and (b) provisions have been made and the project has been duly amended to assure each and every mitigation measure proposed is fully enforceable and will be duly implemented. As to the CEQA authority pertaining to

¹ We strongly object to going forward with a so called "evidentiary hearing" process without having received all information that is potentially relevant to such a process. This not only includes the USFWS Biological Opinion as well as other materials from other agencies, but also information and evidence that though requested has never been provided, such as information and evidence regarding natural gas availability and alternative fuel sources, as well as alternative procedures to be followed if and when natural gas shortages or prices become high enough to effect or disrupt MEC operation. We certainly demand that these matters be the subject of further action, whether you choose to call it evidentiary hearings, workshops or whatever you like. And in this regard, please do not continue to ignore and forget our many comments concerning public participation, all of which we have not only fully incorporated by reference but continue to raise and strenuously object to.

² To the extent they apply to this topic, the comments made in the preceding footnote are incorporated as though fully restated in this footnote. This is particularly true in regard to the failure to provide or significant delay in providing information about these matters, thus greatly increasing the cost of and interfering with the public's right to participate in these ongoing administrative proceedings.

this request/demand, please take a look at sections 21002.1, 21081 and 21086 of the Public Resources Code, and section 15126.4 of 14 California Code of Regulations.

4. Substantial evidence, quantifiable data or other information showing the project's benefits exceed its costs and constitute overriding considerations for incurring potentially significant impacts that can not be mitigated. In regard to this request/demand, you may want to look at section 21081 of the Public Resources Code, and section 15091 of 14 California Code of Regulations. This must cover economic, legal, social, technological and other benefits, and must include an analysis of the project's effect on growth management, economic bases, retention and enhancement of the character of surrounding uses, particularly residential, accommodating increased housing needs, and all other factors contributing to the quality of life in the project area.

5. The substantial evidence or other information concerning the extent to which each of the ecologically superior alternatives identified in the PSA and/or the FSA are infeasible, including a thorough evaluation of each infeasibility factor.

A Without limitation, this must include the substantial evidence supporting the decision not to include additional mitigation measures;.

B It must also include the substantial evidence supporting the decision not to include a commitment (1) to use and support zero-emission and low-emission vehicles and (2) to greater expansion of bus, rail and other means of transportation capable of reducing traffic, air quality and other impacts;.

C And it must further include, as to any measure deemed economically infeasible, the quantifiable evidence supporting a showing that the additional costs or lost profits will be so great as to make the project impractical .

In addition to the foregoing request, we further request an evidentiary hearing, workshop or whatever else you want to call the device providing, considering and evaluating all information regarding the prior environmental record of the project applicant, which includes each of the two corporations involved—Calpine and Bechtel—in any manner involving mitigation of environmental impacts from powerplant projects similar to the MEC over the past 10 years. We specifically request all information in the possession of the CEC and the applicant in any manner involving the implementation or failure to implement mitigation measures, particularly complaints and regulatory action taken against the applicant. This request is being made under the California Public Records Act as well as under CEQA and the Warren-Alquist Act and all guidelines, regulations or other provisions pertaining to those statutory schemes.

We thank you kindly.

Michael E. Boyd

11-21-00